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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 EDDIE LOUIS SMITH III,

9 Plaintiff,

v.

10 BELINDA D. STEWART, et al.,

11 Defendants.

CASE NO. C19-5096 BHS-JRC

ORDER ADOPTING REPORT  
AND RECOMMENDATION

12  
13 This matter comes before the Court on the Report and Recommendation (“R&R”)  
14 of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 71, and  
15 Plaintiff Eddie Louis Smith III’s (“Smith”) objections to the R&R, Dkt. 72.

16 On December 3, 2019, Judge Creatura issued the R&R recommending that the  
17 Court deny Smith’s motion for a temporary restraining order and preliminary injunction.  
18 Dkt. 71. On December 16, 2019, Smith filed objections. Dkt. 72.

19 The district judge must determine de novo any part of the magistrate judge’s  
20 disposition that has been properly objected to. The district judge may accept, reject, or  
21 modify the recommended disposition; receive further evidence; or return the matter to the  
22 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

1 In this case, Smith objects to the R&R on the elements of likelihood of success on  
2 the merits and irreparable harm. First, Smith contends that the R&R erroneously  
3 concluded that he was not likely to succeed on the merits of his Eighth Amendment claim  
4 and did not address his Establishment Clause claim. Dkt. 72 at 2–5. Regarding the  
5 Eighth Amendment claim, Smith argues that it is cruel and unusual punishment to force  
6 him to eat a similar meal for Passover when one of the initial Passover meals made him  
7 ill. Defendants counter that Smith claimed that only a portion of the meal made him ill  
8 and he voluntarily refused to eat the remainder of the food on every subsequent meal.  
9 For example, Smith alleged that the meat portion made him ill and refused to eat the fresh  
10 fruit and vegetables, hard-boiled eggs, etc. The Court agrees with Smith that numerous  
11 questions of fact remain on this issue and also agrees with the R&R that Smith has failed  
12 to meet his burden to establish a likelihood of success on the merits. While it is possible  
13 that Smith could establish a constitutional violation based on being served the same entire  
14 meal only a portion of which allegedly made him ill, he has failed to provide sufficient  
15 authority or facts to establish that he is likely to succeed on this claim. Thus, the Court  
16 adopts the R&R on this issue.

17 Regarding his Establishment Clause claim, the Court agrees with Smith that the  
18 R&R does not directly address this claim. Although Smith has established a greater  
19 likelihood of success on this claim because Defendants have failed to offer, at this point,  
20 any rational reason to allow those observing Ramadan to opt out of the meal plan during  
21 the period of Ramadan while refusing to allow those observing Passover to opt out of the  
22 Passover meal program during the period of Passover, the Court agrees with the R&R

1 that Smith has failed to establish irreparable harm in the absence of equitable relief.  
2 Smith is at a new facility for Passover 2020 and there is a greater likelihood that the  
3 meals will not make him ill than there is that he will become ill. Moreover, Defendants  
4 could change their policy between now and the beginning of Passover. If, however, the  
5 situation arises wherein Smith does become ill from a Passover meal and the institution  
6 continues to serve him the same food, Smith may seek Court intervention to resolve the  
7 issue on an expedited basis. At this point, approximately six weeks before Passover, the  
8 Court adopts the R&R on the issue of failure to show a likelihood of irreparable harm in  
9 the absence of relief.

10 Therefore, the Court having considered the R&R, Smith's objections, and the  
11 remaining record, does hereby find and order as follows:

- 12 (1) The R&R is **ADOPTED**; and  
13 (2) Smith's motion for temporary restraining order and preliminary injunction  
14 is **DENIED**;

15 Dated this 24th day of February, 2020.

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18 BENJAMIN H. SETTLE  
19 United States District Judge  
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